UNITED
NATIONS

CAT

Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment

Distr.
GENERAL

CAT/C/SR.312
1 April 1998

ENGLISH
Original: FRENCH

COMMITTEE AGAINST TORTURE

Nineteenth session

SUMMARY RECORD OF THE 312th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 18 November 1997, at 3 p.m.

Chairman: Mr. DIPANDA MOUELLE

CONTENTS

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (continued)

Initial report of Cuba (continued)

Third periodic report of Spain (continued)

ORGANIZATIONAL AND OTHER MATTERS (continued)

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum to be issued shortly after the end of the session.

GE.97-19373 (E)

The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Initial report of Cuba (CAT/C/32/Add.2) (continued)

1. At the invitation of the Chairman, Mr. Senti Darias, Mr. Peraza Chapeau, Mr. Cala Seguí and Mr. Amat Fores (Cuba) resumed places at the Committee table.

2. The CHAIRMAN asked the members of the Committee whether they wished to ask the Cuban delegation any further questions.

3. Mr. PIKIS (Country Rapporteur) pointed out that the separation between the executive, judicial and legislative branches provided a system of checks and balances which was the only means of preventing abuse of authority. The information provided by the State party showed that in Cuba the judiciary was subordinate to the National People's Assembly and the State Council, which were authorized to instruct the courts as to the interpretation and application of the law. Such a practice was contrary to the principle of the independence and supremacy of the judiciary, which was usually the only branch authorized to determine whether the acts of a particular organ were in conformity with the law.

4. He would also appreciate clarifications on three offences: disrespect, resisting authority and enemy propaganda, whose content was particularly vague. Was advocating a change of Government an act of enemy propaganda? As for resisting authority, which authority was meant? Lastly, he wondered whether the use of a concept such as disrespect might not lead to abuse. He would also appreciate fuller information from the Cuban delegation on two types of penalty, namely, banishment and restricted residence, which at first sight did not appear to be forms of punishment but a means of restricting liberty.

5. Mr. SENTI DARIAS (Cuba), replying to questions asked the previous day by Mr. Burns, said that where the second paragraph of the declaration made by Cuba in respect of article 20 of the Convention was concerned, his Government was fully prepared to engage in a dialogue with the Committee, provided that there was no interference in Cuba's internal affairs, that the confidentiality of the dialogue was respected, as required by article 20 of the Convention, and that Cuba's right to make any declarations it deemed necessary was recognized.

6. Regarding the cases brought to the attention of the Government of Cuba by the Special Rapporteur on torture, he said that the Cuban authorities were currently analysing the information received. Cuba had always fully cooperated with the special rapporteurs of the Commission on Human Rights and with the former United Nations High Commissioner for Human Rights, Mr. Ayala Lasso, who had found during a visit to Cuba that much of the information received by the United Nations from various sources did not

reflect reality. Moreover, some of the allegations taken up by the Special Rapporteur on torture had been denied by the relatives of the persons concerned when they had met foreign journalists.

7. Mr. PERAZA CHAPEAU (Cuba) said that as some members of the Committee had not only asked questions but expressed their opinions on Cuba's State structure, he wished to make a number of remarks. Opinion was far from unanimous about the separation of powers propounded by Locke. It had been dismissed by numerous thinkers, including Jean-Jacques Rousseau, who had emphasized the indivisible nature of the State, beyond any differences between the functions of its various organs. Indivisibility was the underlying principle of the State in Cuba. In addition, the concept of the supremacy of the judiciary put forward by Mr. Pikis was contrary to the thesis adopted by numerous modern thinkers - including those who advocated the separation of powers - who considered that no authority was above the others.

8. Mr. CALA SEGUÍ (Cuba) pointed out that, in Cuba, the judicial function was subordinate to no other function. All the constituent elements of the Cuban State cooperated with one another subject to the law, and the only authority to which they were subordinate was that of the people.

9. Mr. AMAT FORES (Cuba) said one of the things of which Cuba's enemies had attempted to persuade international public opinion was that the Cuban judicial authorities were not independent. As far as that was concerned, he pointed out that the State Council under no circumstances told the courts how to apply the law. Judges were free from any interference and based their decisions solely on the facts and the law. However, there were occasional loopholes in the law or doubts over the interpretation of a particular article, and the only bodies authorized to dispel such doubts were the law-making bodies, in other words parliament and the State Council. One of the guarantees of the independence of the judiciary was the fact that Cuban courts comprised at least three judges, thereby minimizing the likelihood of outside influence. Regarding the length of their period of office, judges were elected for five years and could be re-elected. A judge who performed satisfactorily could remain in office for 35 years, although he would have to be re-elected every five years. The situation should change with the adoption of a new act due to come into force on 1 January 1998.

10. The CHAIRMAN thanked the Cuban delegation for its additional information and invited it to attend the afternoon meeting on the following day to hear the Committee's conclusions and recommendations.

11. The Cuban delegation withdrew.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2) (continued)

Appointment of country rapporteurs and alternate rapporteurs for the next session

12. The CHAIRMAN invited the Committee to appoint the country rapporteurs and alternate rapporteurs for the reports of the following State parties: France, Germany, Guatemala, Kuwait, New Zealand, Norway, Peru, Sri Lanka and Tunisia.

13. Mr. BURNS said that if Mr. Zupančič was prepared to be the rapporteur for Germany, he would willingly serve as alternate rapporteur. He would also be prepared to serve as rapporteur for Kuwait.

14. Mr. PIKIS said he had suggested that the choice of country rapporteurs and alternate rapporteurs should be conducted in a less personalized manner. Moreover, he proposed that, as there would undoubtedly be changes in the membership of the Committee at the forthcoming elections, only some of the rapporteurs should be designated at the current session.

15. The CHAIRMAN said that he clearly recalled that Mr. Pikis's suggestion had been accepted, but the Committee had also agreed to take into account, as far as possible, each member's knowledge of the legal systems and languages of the countries concerned.

16. Mr. CAMARA pointed out that, as the reports were translated into all the working languages, there was no language problem. Moreover, the specific nature of the legal and judicial systems in the various countries was not an insurmountable obstacle.

17. Mr. SORENSEN reminded the Committee that the General Assembly would perhaps authorize it to hold an additional week's meetings and that it would be desirable to appoint country rapporteurs for all the reports; he offered to serve as rapporteur for Guatemala and Norway and as alternate rapporteur for Kuwait.

18. Mrs. ILIOPOULOS-STRANGAS said she would no longer be a member of the Committee at its next session. In her view it would be inadvisable to appoint country rapporteurs for all the reports immediately, as such a step would leave the newly elected members of the Committee with nothing to do. Moreover, she thought that the practice of appointing the same rapporteur for the successive reports of a State party might be misinterpreted and undermine the Committee's credibility.

19. Mr. CAMARA reminded the Committee that the terms of half of its members were to be renewed and that it was impossible to anticipate the results of an election.

20. Mr. GONZALEZ POBLETE said he thought that the Committee could appoint country rapporteurs for five of the reports and set aside five others for the new members.

21. Mr. YAKOVLEV said he thought that the Committee should definitively appoint as country rapporteurs the five members of the Committee whose terms were to continue and appoint the five others provisionally, subject to their re-election and on the understanding that the task assigned to them would be taken over by their successors if they were not re-elected.

22. Mr. PIKIS said he doubted whether it was procedurally possible to assign tasks to persons who had not yet been elected.

23. Mr. CAMARA proposed a compromise: the Committee could appoint as country rapporteurs the five members whose terms had not yet expired and

appoint provisionally these members who were standing for re-election; if they were not re-elected, the Committee could decide on the reallocation of tasks, taking into account the fact that the Committee's new members would need some time to familiarize themselves with its work.

24. Mr. PIKIS said he thought that even if the outgoing members were re-elected, the Committee was not authorized to charge them with a mission by virtue of a mandate they had not yet received.

25. The CHAIRMAN said he shared Mr. Pikis's view and thought there was all the less reason for planning to entrust hypothetical new members with tasks.

26. Mr. SORENSEN said it was unthinkable for the Committee to entrust in advance members who had not yet received mandates with tasks relating to articles 20 and 22 of the Convention, which were confidential. Conversely, he saw no reason why tasks required in application of article 19, which were public, could not be entrusted to outgoing members who were standing for re-election difficulty.

27. The CHAIRMAN emphasized that, before taking on any tasks, whether public or confidential, members had to be re-elected and take an oath.

28. Mrs. ILIOPOULOS-STRANGAS said she shared Mr. Pikis's view; the best guarantee of the quality of the Committee's work was strict compliance with its procedure. In addition, all the members of the Committee whether recently elected or long-standing members, had equal rights and should be treated identically. Accordingly, the appointment of all the country rapporteurs should be postponed until the next session.

29. The CHAIRMAN suggested that, as soon as the Committee's new membership was known, contacts should be made in order to effect the appointments, without waiting until the next session.

30. The CHAIRMAN said that, if there were no objections he would take it that, the Committee wished to postpone the appointment of the country rapporteurs and alternate rapporteurs until the next session, when the Committee's composition would be known.

31. It was so decided.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (continued)

Third periodic report of Spain (continued) (CAT/C/34/Add.7)

32. At the invitation of the Chairman, Mr. Pérez-Hernández, Mr. González de Linares, Mr. Ramos Gil, Mr. Cerrolaza Gomez, Mr. Nistral Burón, Mr. Pérez Gomez, Mr. Martín Alonso and Mr. Borrego Borrego resumed places at the Committee table.

33. The CHAIRMAN invited the Spanish delegation to reply to the questions put by the members of the Committee.

34. Mr. RAMOS GIL said that the replies would be given in the order of the articles of the Convention. Regarding the inclusion of the offence of torture into the Spanish Penal Code, he said that article 22.4 of the Code stipulated that any offence that was committed on racist or anti-Semitic grounds, or on any other grounds constituting discrimination, was aggravated and consequently punishable by a more severe sentence. Criminal penalties could be coupled with administrative penalties, particularly in the case of the military; any act resembling degrading, humiliating or discriminatory treatment, even if it did not constitute a criminal offence, could lead to dismissal. He emphasized that as a rule discrimination was an aggravating circumstance for any act, even if the act itself was not an offence. For example, refusal by a State official to provide a public service on grounds of racism or anti-Semitism, or for any other discriminatory reason was liable to a sentence of from one to three years' prison and dismissal. Articles 510, 512 and 515 of the Penal Code laid down similar penalties for infringements of public liberties, the dissemination of racist or anti-Semitic views or even unlawful association for the purpose of expressing racist, anti-Semitic or discriminatory opinions. Lastly, article 607.2 of the Penal Code specifically defined the crime of genocide. Regarding the definition of torture, article 22.7 of the Penal Code stipulated that the use of coercion or threats by a State official constituted an aggravating circumstance.

35. In reply to the question whether there was any circumstance that could justify torture, he said that necessity could not be invoked as justification for a torture-like act. Moreover, the Penal Code regulated the conduct of interrogations and specifically prohibited torture. Under article 77.1 of the Code, anyone who committed an offence to carry out another offence was liable to the penalty for the more serious offence. Regarding the various acts that could constitute acts of torture, article 74.3 of the Penal Code clearly stipulated that each act committed constituted an offence.

36. Mr. PEREZ GOMEZ (Spain), replying to questions on article 3 of the Convention, said that new norms applied in respect of asylum and immigration. His delegation would transmit to the secretariat the Spanish text of the 1994 Act on asylum, together with the text of new regulations on the application of legislation relating to aliens, dating from 1996. The new provisions concerned three aspects of the issue. First of all, under the new Act refugees who were refused the right of asylum were nevertheless entitled to protection on humanitarian grounds. The new Act also introduced a fast-track procedure for processing asylum applications in order to prevent abuse of the asylum procedure. The mechanism was designed to deal, in particular, with economic migrants. It also made provision for the Office of the High Commissioner for Refugees to participate in the procedure. Appeals could be made against decisions. Finally, the new Act authorized asylum seekers whose applications were turned down to re-apply; previously, they had been required to leave Spanish territory, unless there were serious grounds to believe they ran the risk of being killed or tortured if they were returned to their country. Regarding the provisions adopted to prevent asylum seekers or immigrants from being expelled to a country in which they might be tortured, article 17, paragraph 9, of the Act on asylum and article 23, paragraph 1, of the enabling regulations allowed a residence permit to be issued to unsuccessful asylum seekers who were in that situation. Article 17, paragraph 3, of the Act referred to article 33 of the Convention relating to

the Status of Refugees. The Act specifically stated that no one could be returned to a country in which they might suffer torture or ill-treatment. Article 103 of the new 1996 regulations relating to the application of legislation on aliens who had not requested asylum and who were liable to deportation specifically stated that they were entitled to a Spanish residence permit if it was not possible to return them to their country of origin because of fears for their physical and mental integrity. Within the framework of the European Union, Spain had supported Denmark's initiative concerning the granting of subsidiary protection to certain persons who did not have refugee status and who would be in danger if they returned to their own country. Spain was participating in the work under way within the European Union to ensure uniform treatment of aliens who, for various reasons, should not be compelled to return to their country of origin. Spain's Constitution (art. 96, para. 1) stipulated that the European Convention on Human Rights was an integral part of domestic law. Thus, international norms relating to the right of asylum and aliens were applied directly under domestic law, in contrast to the situation under the 1978 Constitution. Regarding the training of officials, he emphasized that courses on international law and international humanitarian law had been provided for many years in the ministries concerned. A special effort to develop awareness of the campaign against racism would be made on the occasion of the European year of action to combat racism. The territories of Ceuta and Melilla were an integral part of Spain and the laws on expulsion or the return of aliens to their country of origin were applied in exactly the same manner as on the rest of Spanish territory.

37. Mr. MARTIN ALONSO (Spain) noted that, according to the Country Rapporteur, Spain's report contained little information on the teaching of human rights and the prevention of torture and ill-treatment in the professional training of members of the security forces. He would provide the Committee with written information on that subject at a later date, but wished to describe the major features of the professional and humanistic training provided to policemen and members of the Spanish State security forces. They were required to have completed at least their secondary education and were recruited through a competitive examination. They subsequently received two years' further training during which they were subject to continuous assessment. On completion of their training, those who did not make the grade were not recruited. Subsequently, throughout their careers, they were kept informed of the various amendments to legislation and given teaching in the constitutional precepts concerning the exercise of fundamental freedoms. In particular, they had to be familiar with Organizational Act No. 2/86 relating to the security forces, article 5 of which set forth the fundamental principles of conduct expected of members of those forces, which were based not only on the Constitution, but also on the Council of Europe's Declaration on the Police and the United Nations Code of Conduct for Law Enforcement Officials.

38. They were also taught procedural law and the provisions of the 1996 Penal Code, which dealt very severely with offences committed by officials in the performance of their duties. The disciplinary regulations classified the ill-treatment of citizens as a gross fault, if not an offence. Specific training in humanitarian law was provided by the Ministry of the Interior in conjunction with the Spanish Red Cross.

39. Spain had participated, and was continuing to participate, in numerous United Nations peacekeeping missions and operations. It had also taken part, for example as a member of the European Union, in electoral observer missions. Spain could claim to be a pioneer in international training for United Nations police observers. In the previous four years, almost half a million police officers from all countries in Latin America had attended such training courses at the National Police Training Centre in Avila. He hoped to be able to provide the Committee with detailed documentation on all those elements and on the training courses provided.

40. Mr. CERROLAZA GOMEZ (Spain), turning to the question of training for doctors, said that the issue of forensic medicine, which came directly within the Committee's competence but was extremely specialized, should be dealt with separately from general medicine. In Spain, each medical faculty decided on its own curriculum, although there were guidelines governing the subjects studied under the general medical curriculum. Particular emphasis was placed on ethical and deontological aspects, legal questions (administrative and criminal law), and curriculums even included elements of philosophy and political science.

41. Regarding assistance for victims of torture, his delegation would send the Committee the text of Act No. 35-1995 on assistance to victims of violence and sexual assault, which introduced machinery for compensating victims of all kinds of violence. In addition, he was able to inform the Committee that, on 30 October 1997, the Government of Spain had made a contribution of US$ 50,000 to the Voluntary Fund for Victims of Torture.

42. Mr. BORREGO BORREGO (Spain) said he would reply to the concerns expressed by the Country Rapporteur and other members of the Committee regarding the application of article 11 and, in part, of article 15 of the Convention. In Spain, the maximum period of police custody was three days, except in cases involving terrorism, organized crime or drug trafficking, when it could be extended to five days. He pointed out that previously, the maximum period of custody had been 10 days and that it was the Constitutional Court itself which had ordered it to be reduced to five days. The decision to keep persons in detention, which could be combined with incommunicado detention in the case of organized gangs, had to be taken by the judges within 24 hours of arrest. Regarding the problem of the choice of lawyer, he informed the Committee that lawyers were not appointed by the court or by the Government, but chosen by the Bar Association in conformity with its own regulations. Unfortunately, armed gangs posed serious problems because of the reprisals they took. The European Commission on Human Rights had declared inadmissible the complaints submitted to it concerning the question of court-appointed lawyers and extensions of periods of detention. He emphasized that such extensions were not automatic but were subject to very strict judicial control, including frequent medical examinations. Periods of questioning were governed by a code and all police officers who took part had to be identified. Policemen were allowed to hide their faces because of the need to protect them against reprisals and certainly not to enable them to ill-treat detainees with impunity. The law prohibited officers taking statements from remaining anonymous. An instruction issued by the Minister of

the Interior on 12 May 1997 stipulated that the identity of all officers participating in taking statements should be recorded, and it was currently impossible not to know exactly which law enforcement officials had taken part in a particular action or operation.

43. With regard to the concerns expressed about habeas corpus procedure, he said that the 1984 Organization Act also applied of course to custod. and pre-trial detention on charges of suspected membership of an armed gang. There were no exceptions. Moreover, the judge was required to take a decision on an application for habeas corpus within 24 hours. In case of refusal, an immediate appeal was possible to the Constitutional Court.

44. Any defective evidence was inadmissible, except in respect of the offence of torture, in which case the proceedings against those responsible followed their course.

45. Regarding the observations made in respect of paragraph 30 of the report, he said that article 504 bis of the Criminal Procedure Act had not remained in force for very long. It had been designed to prevent accused persons belonging to armed gangs from obtaining conditional release against the will of the Public Prosecutor. The amendment thus introduced into the law had been unacceptable under the Spanish system as it contained a discriminatory element that was contrary to article 14 of the Constitution. For that reason, the Constitutional Court had abrogated the provision.

46. A question had also been asked concerning the percentage of the prison population awaiting trial. At the end of 1996, it had been 24.5 per cent of all detainees. Pre-trial detention always had to be justified and Spain followed the practice of the authorities in Strasbourg in respect of the acceptable length of detention pending trial. The maximum periods were not automatically imposed, to prevent abuse. The length of pre-trial detention had attained four years in the "megatrials" involving drug trafficking offences in which several persons were accused and which had complex international ramifications. In other cases, the maximum length of pre-trial detention was no more than one or two years.

47. Mr. NISTRAL BURON (Spain) said that, as a specialist in prison management, he would attempt to give a brief description of the conditions prevailing in Spain's prisons. The Spanish penal system was modern, flexible and humane and offered full legal guarantees under the first organization act to have been promulgated under the democratic regime. The act, which had been unanimously adopted in 1979, had reflected the common will of all political tendencies and its implementation had brought about a thorough reform of the prison system, transforming it into one of the most modern in Europe and in the world. In Spain, the fundamental purpose of custodial sentences was the social rehabilitation of detainees when they left prison, and it was always borne in mind that the penalty was no more than a deprivation of liberty. The judge responsible for monitoring conditions in prison, who was independent of the Executive, was responsible for ensuring the administration acted in conformity with the interests and rights of prisoners. Since 1979, the Government had made major efforts to put the act into practice; in particular, it had made a major financial effort to ensure the social rehabilitation of prisoners, by providing them with all the necessary human and material

resources and ensuring respect for their dignity. In particular, since 1991 the administration had implemented an infrastructure plan for the modernization of all prisons. So far, 10 of them had been rehabilitated and the most recent one to have been inaugurated had cost 8 billion pesetas. In addition, six new prisons had been built and seven others were planned. The development of the prison infrastructure offered detainees easier access to culture, education and vocational training, enabling them to make good their deficiencies and to take their place in society when they left prison. Not only material means were made available to them; despite current economic difficulties, the Government allocated a significant proportion of the budget to increasing the number of prison staff; while the number of officials in other categories was being pared down, the prison administration was still recruiting staff, to ensure that custodial sentences achieved their actual purpose.

48. Mr. BORREGO BORREGO (Spain) said he wished to provide some details on current procedure regarding allegations of torture. There were five situations that could lead to the opening of an investigation. In the first of them, the alleged victim made a statement before the officiating judge. The latter assessed his allegations at a face-to-face meeting with the alleged victim and on the basis of medical reports, before deciding whether to refer the case to the judge within whose jurisdiction it fell, in order for him to investigate the possibility of ill-treatment. A case referred to by Mr. Burns had thus been prosecuted ex officio by the judge. Secondly, a formal complaint lodged with the competent judge by the party concerned, his relatives or any other person or body led to the opening of an investigation, as torture was a public offence. Thirdly, the judge dealing with the detainee's case could on his own initiative, at any time and in the absence of any allegation, begin investigations if he suspected that an irregularity had occurred during detention. The Government Attorney's Office could also institute proceedings. Finally, a report by an official could lead to the opening of an investigation, as the law required State officials to inform the judge of any suspicious injuries. The manner in which the facts were established was described in paragraph 57 of the report under consideration. Criminal proceedings were automatically opened in cases of torture, as was demonstrated by a case currently pending before the Committee and to which, for that reason, it was impossible to refer.

49. In reply to another question, he confirmed that in a democracy no one was above the law and that in the GAL affair, in which extremely serious charges had been made, proceedings were in progress even though the events dated back more than 13 years, as in democratic Spain statutory limitation did not apply to such crimes.

50. The question of the slow pace of judicial proceedings in cases involving torture had been raised. He recognized that if a procedure offering full guarantees was established, there was a risk of delays. However, there had never been any unreasonable delays and such cases had, with few exceptions, been conducted diligently. Regarding the severity of the penalties handed down, he first of all pointed out that the judiciary was completely independent; nevertheless, in practice penalties had become considerably heavier in recent years: more than four years' prison and six years' special disqualification, which were the penalties laid down by the former Penal Code.

There had been no remission of sentence during the period covered by the report. The new Penal Code in force since 1996 had introduced heavier sentences and clarified the distinction between special disqualification and absolute disqualification. As the Country Rapporteur had emphasized, the strict application of article 2, paragraph 2 was a vital necessity, and in that connection he referred to paragraph 55 of the report.

51. Mr. RAMOS GIL (Spain), referring to the application of article 14 of the Convention, said that where residual liability was concerned, like the former Penal Code, the new Penal Code in its article 121 specifically established the residual liability of State officials for their acts, regardless of whether they were committed in the performance of their duties; case law also extended such liability to acts committed while off duty, and held the administration liable on the grounds that it had either not exercised care in choosing an official or had created the risk. The protection provided by the law required the administration to pay compensation if the guilty party was wholly or even partially insolvent. In the latter case, as the administration was prohibited from withdrawing more than a small percentage of the guilty official's salary each month, the administration was itself required immediately to compensate the victim, a requirement that had been confirmed by the State Council. In addition, the law on the protection of victims specifically provided for the introduction of a system of public assistance and of information for victims and for the establishment of an office for that purpose. All those measures were distinct from applications for compensation, which could moreover be submitted directly to the administration, rather than to its officials. As a whole, the provisions established an extremely comprehensive system of residual civil liability for all types of offences.

52. Mr. BORREGO BORREGO (Spain), referring to the apparent contradiction, to which some members of the Committee had drawn attention, between the data on complaints of torture provided in the report and the relevant figures provided by non-governmental organizations, explained that the data contained in the report were official figures for complaints lodged with the judicial organs, and had been provided by the Government Attorney's Office, whereas the complaints referred to by the non-governmental organizations were allegations that had been sent directly to them and which had not necessarily been lodged as formal complaints with the courts. The decisions referred to in the report were final decisions handed down by the highest courts during the period covered by the report; they had been recorded in a computerized data bank and the data contained in the report referred to all the cases identified by the computer as concerning torture.

53. Mr. NISTRAL BURON (Spain) thanked Mr. Burns for having referred to the sad case of Mr. Blanco Garrido's murder. Although his delegation had already answered his questions, he again wished to refer to the Erreguerena case. The question that immediately arose was whether the sentence handed down in that case was excessive; under the Constitution, the matter was to be decided solely by the judiciary, on the basis of the principle of legality, and more particularly of the Penal Code; the Executive could under no circumstances interfere. In the Erreguerena case, the sentence had been handed down by a court composed of three judges, one of whom had in fact been in favour of the acquittal of the accused. It was worth mentioning that, under Spanish law, constitutional practice recognized the right of anyone who had been convicted

in a court of first instance to appeal for judicial review to the Supreme Court; the appeal had a suspensory effect. In the case in question, the parties concerned had lodged an appeal.

54. Mr. RAMOS GIL (Spain) concluded by saying that his delegation looked forward to receiving the Committee's observations and recommendations.

55. The Spanish delegation withdrew.

The meeting rose at 6 p.m.